Jack in the Box, Inc. *and* Dana Ocampo. Case 32–CA–145068

May 24, 2016

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On December 1, 2015, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Applying the Board's decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc*., 361 NLRB No. 72 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), the judge found that the Respondent violated Section 8(a)(1) of the Act by maintaining a Dispute Resolution Agreement (Arbitration Agreement) that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. The judge also found, relying on *D. R. Horton* and *U-Haul of California*, 347 NLRB 375, 377–378 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007), that maintaining the Arbitration Agreement violated Section 8(a)(1) because employees reasonably would construe it to prohibit or restrict their right to file unfair labor practice charges with the Board. Finally, the judge found that the Respondent's maintenance of the confidentiality provision of the Arbitration Agreement independently violated Section 8(a)(1).

The Board has considered the decision and the record in light of the exceptions and briefs and, based on the judge's application of *D. R. Horton* and *Murphy Oil*, has decided to affirm the judge's rulings, findings,[1] and conclusions as amended, and to adopt the recommended Order, as modified and set forth in full below.[2]

AMENDED CONCLUSIONS OF LAW

Delete the phrase "and enforcing" from Conclusions of Law 1, 2, and 3.

[1] The Respondent contends that its Arbitration Agreement includes an exemption allowing employees to file charges with administrative agencies and thus does not, as in *D. R. Horton,* unlawfully prohibit them from collectively pursuing litigation of employment claims in all forums. We reject this argument for the reasons set forth in *SolarCity Corp.*, 363 NLRB No. 83, slip op. at 2–4 (2015).

In finding the Arbitration Agreement unlawful, we do not rely on *Supply Technologies*, *LLC,* 359 NLRB No. 38 (2012), cited by the judge.

[2] This case was submitted to the judge on a joint motion to waive a hearing and proceed on a stipulated record. The judge found that the Respondent violated the Act by "maintaining *and/or enforcing*" (emphasis added) its Arbitration Agreement. However, although the statement of issues in the joint motion asks whether the Respondent unlawfully *enforced* the Arbitration Agreement, the complaint does not allege unlawful enforcement, and there is no evidence in the stipulation of facts that the Respondent ever enforced the Arbitration Agreement. Accordingly, we shall amend the judge's conclusions of law and modify the judge's recommended Order and notice to omit the reference to enforcement. We shall further modify the judge's recommended Order to conform to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

The dissent observes that the Act does not "dictate" any particular procedures for the litigation of non-NLRA claims, and "creates no substantive right for employees to insist on class-type treatment" of such claims. This is correct, as the Board has previously explained in *Murphy Oil*, 361 NLRB No. 72, slip op. at 2, and *Bristol Farms*, 363 NLRB No. 45, slip op. at 2 & fn. 2 (2015). But what the dissent ignores is that the Act "does create a right to *pursue* joint, class, or collective claims if and as available, without the interference of an employer-imposed restraint." *Murphy Oil*, 361 NLRB No. 72, slip op. at 2 (emphasis in original). The Respondent's Arbitration Agreement is just such an unlawful restraint.

Likewise, for the reasons explained in *Murphy Oil* and *Bristol Farms*, above, there is no merit to the dissent's view that finding the Arbitration Agreement unlawful runs afoul of employees' Sec. 7 right to "refrain from" engaging in protected concerted activity. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 18; *Bristol Farms*, 363 NLRB No. 45, slip op. at 3. Nor is the dissent correct in insisting that Sec. 9(a) of the Act requires the Board to permit individual employees to prospectively waive their Sec. 7 right to engage in concerted legal activity. See *Murphy Oil*, slip op. at 17–18; *Bristol Farms*, above, slip op. at 2.

We note that there is a statement on the second page of the Arbitration Agreement, under the heading "Claims Covered by the Agreement," that states that "[n]othing in this Agreement precludes Employee from filing a charge or from participating in an administrative investigation of a charge before an appropriate government agency including the Equal Employment Opportunity Commission or similar state agency." For the reasons set forth in *The Rose Group d/b/a Applebee's Restaurant*, 363 NLRB No. 75, slip op. at 1 fn. 1, slip op. at 10 (2015), we disagree with the dissent that, in context, the inclusion of this language would eliminate any reasonable uncertainty about the right of employees to file charges with the Board to resolve claims specifically covered by the mandatory arbitration agreement described as the exclusive means for dispute resolution. Indeed, the language here is even less likely to do so than in the cases cited by our colleague, where the policies referred to the filing of charges with a "federal" agency. Here, the policy refers only to the "Equal Employment Opportunity Commission or similar *state* agency" (emphasis added).

Finally, for the reasons stated in *Ralph's Grocery Co.*, 363 NLRB No. 128, slip op. at 3 (2016), we disagree with the dissent's argument that the Respondent's Arbitration Agreement would be lawful even if it requires employees to arbitrate their unfair labor practice claims because, in his view, it does not restrict employees' right to file charges with the Board.

ORDER

The National Labor Relations Board orders that the Respondent, Jack in the Box, Inc., nationwide including a facility in San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a mandatory arbitration agreement that requires employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

(b) Maintaining a mandatory arbitration agreement that employees reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

(c) Maintaining a mandatory arbitration agreement that requires employees to maintain the confidentiality of the terms of an arbitrator's decision unless agreed to in writing, subpoenaed by a court to testify, or required by law.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the mandatory arbitration agreement in all of its forms, or revise it in all of its forms to make clear to employees that the arbitration agreement does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums, that it does not restrict employees' right to file charges with the National Labor Relations Board, and that it does not require employees to maintain the confidentiality of arbitration proceedings.

(b) Notify all current and former employees who were required to sign acknowledgements regarding the mandatory arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised policy.

(c) Within 14 days after service by the Region, post at all of its locations nationwide copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at those facilities at any time since July 26, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 2016

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, concurring in part and dissenting in part.

In this case, my colleagues find that the Respondent's Dispute Resolution Agreement (the Agreement) violates Section 8(a)(1) of the National Labor Relations Act (the Act or NLRA) because the Agreement waives the right to participate in class or collective actions regarding non-NLRA employment claims. I respectfully dissent from this finding for the reasons explained in my partial dissenting opinion in *Murphy Oil USA, Inc.*[1] I also dissent from my colleagues' finding that the Agreement violates Section 8(a)(1) on the basis that it interferes with the right of employees to file charges with the Board. However, I agree with my colleagues that a confidentiality provision in the Agreement, which explicitly restricts

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] 361 NLRB No. 72, slip op. at 22–35 (2014) (Member Miscimarra, dissenting in part). The Board majority's holding in *Murphy Oil* invalidating class-action waiver agreements was denied enforcement by the Court of Appeals for the Fifth Circuit. *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015).

employees from disclosing the arbitrator's decision or the terms of the arbitrator's award, is unlawful, but I would reach that conclusion under a different standard than my colleagues apply. Accordingly, I respectfully concur in part and dissent in part.[2]

DISCUSSION

1. Legality of the class action waiver

I agree that an employee may engage in "concerted" activities for "mutual aid or protection" in relation to a claim asserted under a statute other than NLRA.[3] However, Section 8(a)(1) of the Act does not vest authority in the Board to dictate any particular procedures pertaining to the litigation of non-NLRA claims, nor does the Act render unlawful agreements in which employees waive class-type treatment of non-NLRA claims. To the contrary, as discussed in my partial dissenting opinion in *Murphy Oil*, NLRA Section 9(a) protects the right of every employee as an "individual" to "present" and "adjust" grievances "at any time."[4] This aspect of Section 9(a) is reinforced by Section 7 of the Act, which protects each employee's right to "refrain from" exercising the collective rights enumerated in Section 7. Thus, I believe it is clear that (i) the NLRA creates no substantive right for employees to insist on class-type treatment of non-NLRA claims;[5] (ii) a class-waiver agreement pertaining to non-NLRA claims does not infringe on any NLRA rights or obligations, which has prompted the overwhelming majority of courts to reject the Board's position regarding class-waiver agreements;[6] and (iii) enforcement of a class-action waiver as part of an arbitration agreement is also warranted by the Federal Arbitration Act (FAA).[7] Although questions may arise regarding the enforceability of particular agreements that waive class or collective litigation of non-NLRA claims, I believe these questions are exclusively within the province of the court or other tribunal that, unlike the NLRB, has jurisdiction over such claims.

2. Alleged interference with NLRB charge filing

The judge also found that the Respondent violated Section 8(a)(1) by maintaining the Agreement because, in her view, the Agreement is "reasonably read to *preclude* filing charges with the NLRB" (emphasis added). See, e.g., *U-Haul Co. of California*, 347 NLRB 375, 377–378 (2006) (finding that employer violated the Act by maintaining an arbitration policy that employees would reasonably read as prohibiting them from filing unfair labor practice charges with the Board), enfd. mem. 255 Fed. Appx. 527 (D.C. Cir. 2007). My colleagues affirm the judge's finding that the Agreement interferes

[2] I join my colleagues in setting aside the judge's finding that the Respondent violated the Act by enforcing the Agreement.

[3] I agree that non-NLRA claims can give rise to "concerted" activities engaged in by two or more employees for the "purpose" of "mutual aid or protection," which would come within the protection of NLRA Sec. 7. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 23–25 (Member Miscimarra, dissenting in part). However, the existence or absence of Sec. 7 protection does not depend on whether non-NLRA claims are pursued as a class or collective action, but on whether Sec. 7's statutory requirements are met—an issue separate and distinct from whether an individual employee chooses to pursue a claim as a class or collective action. Id.; see also *Beyoglu,* 362 NLRB No. 152, slip op. at 4–5 (2015) (Member Miscimarra, dissenting).

[4] *Murphy Oil*, above, slip op. at 30–34 (Member Miscimarra, dissenting in part). Sec. 9(a) states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment" (emphasis added). The Act's legislative history shows that Congress intended to preserve every individual employee's right to "adjust" any employment-related dispute with his or her employer. See *Murphy Oil*, above, slip op. at 31–32 (Member Miscimarra, dissenting in part).

[5] When courts have jurisdiction over non-NLRA claims that are potentially subject to class treatment, the availability of class-type procedures does not rise to the level of a substantive right. See *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344, 362 (5th Cir. 2013) ("The use of class action procedures . . . is not a substantive right.") (citations omitted), petition for rehearing en banc denied No. 12–60031 (5th Cir. 2014); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 332 (1980) ("[T]he right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims.").

[6] The Fifth Circuit has repeatedly denied enforcement of Board orders invalidating a mandatory arbitration agreement that waived class-type treatment of non-NLRA claims. See, e.g., *Murphy Oil, Inc., USA v. NLRB*, above; *D. R. Horton, Inc. v. NLRB,* above. The overwhelming majority of courts considering the Board's position have likewise rejected it. See *Murphy Oil,* 361 NLRB No. 72, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 36 fn. 5 (Member Johnson, dissenting) (collecting cases); see also *Patterson v. Raymours Furniture Co., Inc*., 96 F. Supp. 3d 71 (S.D.N.Y. 2015); *Nanavati v. Adecco USA, Inc.*, 99 F. Supp. 3d 1072 (N.D. Cal. 2015), motion to certify for interlocutory appeal denied 2015 WL 4035072 (N.D. Cal. June 30, 2015); *Brown v. Citicorp Credit Services, Inc.,* No. 1:12–cv–00062–BLW, 2015 WL 1401604 (D. Idaho Mar. 25, 2015) (granting reconsideration of prior determination that class waiver in arbitration agreement violated NLRA); but see *Totten v. Kellogg Brown & Root, LLC*, No. ED CV 14–1766 DMG (DTBx), 2016 WL 316019 (C.D. Cal. Jan. 22, 2016).

[7] For the reasons expressed in my *Murphy Oil* partial dissent and those thoroughly explained in former Member Johnson's dissent in *Murphy Oil*, the FAA requires that the arbitration agreement be enforced according to its terms. *Murphy Oil,* above, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 49–58 (Member Johnson, dissenting).

with employees' right to file charges with the Board. I disagree, and I would reverse the judge's finding.

The Agreement is set forth in a five-page document. It broadly requires arbitration of all employment related claims, which would encompass claims arising under the NLRA.[8] However, for the reasons stated in my separate opinion in *The Rose Group d/b/a Applebee's Restaurant*, I believe that an agreement may lawfully provide for the arbitration of NLRA claims, and such an agreement does not unlawfully prohibit the filing of charges with the NLRB, particularly when the right to do so is explicitly stated in the agreement itself.[9] In the instant case, the Agreement specifically provides that "[n]othing in this Agreement precludes Employee from filing a charge or from participating in an administrative investigation of a charge before an appropriate government agency including the Equal Employment Opportunity Commission or similar state agency." I believe that language in the Agreement requiring the arbitration of NLRA claims does not unlawfully restrict the right to file charges with the Board, where the Agreement also states that "[n]othing in this Agreement precludes Employee from filing a charge [with] . . . an appropriate government agency." See *GameStop Corp*., above, 363 NLRB No. 89, slip op. at 4–5 (Member Miscimarra, concurring in part and dissenting in part) (no violation where employer's arbitration rules allowed for filing a charge "with a state, local or federal administrative agency such as the Equal Employment Opportunity Commission"); *Great Lakes Restaurant Management, LLC*, 363 NLRB No. 130, slip op. at 7 (2016) (Member Miscimarra, dissenting in part) (no violation where arbitration agreement required arbitration of all legal claims, including those arising under the NLRA, and also stated that the agreement "will not prevent you from filing a charge with any state or federal government administrative agency"). Accordingly, I would reverse the judge's finding that the Agreement unlawfully interferes with Board charge filing.

[8] Under the heading "Claims Covered by the Agreement," the Agreement states it applies to all "disputes and claims . . . in any way related to Employee's employment or termination of employment." The Agreement further states that "all claims or disputes covered by this Agreement must be submitted to binding arbitration, and that this binding arbitration will be the sole and exclusive remedy for resolving any such claim or dispute."

[9] 363 NLRB No. 75, slip op. at 3–5 (2015) (Member Miscimarra, concurring in part and dissenting in part). See also *Ralph's Grocery Co*., 363 NLRB No. 128, slip op. at 6–7 (Member Miscimarra, concurring in part and dissenting in part); *GameStop Corp*., 363 NLRB No. 89, slip op. at 4–5 (2015) (Member Miscimarra, concurring in part and dissenting in part).

3. Confidentiality clause

Finally, I concur in the majority's finding that the Agreement violates Section 8(a)(1) of the Act because it contains an overbroad confidentiality restriction. The confidentiality provision states: "The Arbitrator's decision is confidential. Neither Employee nor the Company may publicly disclose the terms of the award unless:

- Agreed to in writing by the party, or
- Subpoenaed by a court to testify, or
- Required by law."

I agree that the confidentiality provision violates Section 8(a)(1) because it would preclude all public discussion (with narrow exceptions) of employment-related matters addressed in arbitral decisions, including discussions that constitute concerted activity involving two or more employees engaged in for the purpose of mutual aid or protection, and the record reveals no countervailing interest that justifies the impact on NLRA-protected rights. Cf. *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 11–13 (2016) (Member Miscimarra, concurring in part and dissenting in part) (describing requirement that Board strike a proper balance between asserted business justifications and potential impact on NLRA rights); *Banner Estrella Medical Center*, 362 NLRB No. 137, slip op. at 13–18 (2015) (Member Miscimarra, dissenting in part) (same).[10]

Accordingly, for the reasons stated above, I respectfully concur in part with and dissent in part from the majority's decision.

Dated, Washington, D.C. May 24, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[10] In their analysis of the lawfulness of the confidentiality provision, my colleagues do not consider whether the Respondent demonstrated an interest that potentially justifies the impact of the provision on protected rights under the NLRA. In my view, the Board must do so, for the reasons I explained at length in my separate opinions in *William Beaumont Hospital*, above, and *Banner Estrella*, above.

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory arbitration agreement that requires our employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT maintain a mandatory arbitration agreement that employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT maintain a mandatory arbitration agreement that requires employees to maintain the confidentiality of the terms of an arbitrator's decision unless agreed to in writing, subpoenaed by a court to testify, or required by law.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the mandatory arbitration agreement in all of its forms, or revise it in all of its forms to make clear that the arbitration program does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums, that it does not restrict your right to file charges with the National Labor Relations Board, and that it does not require you to maintain the confidentiality of arbitration proceedings.

WE WILL notify all current and former employees who were required to sign acknowledgements regarding the mandatory arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised policy.

JACK IN THE BOX, INC.

The Board's decision can be found at www.nlrb.gov/case/32–CA–145068 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, DC 20570, or by calling (202) 273–1940.

Lelia M. Gomez, Esq. and *Judith J. Chang, Esq.,* for the General Counsel.
Christian J. Rowley, Esq., for the Respondent.
Kevin R. Allen, Esq., for the Charging Party.

DECISION

MARY MILLER CRACRAFT, Administrative Law Judge. This case concerns the Arbitration Agreement maintained by Jack in the Box, Inc. (Respondent). The issues presented are whether Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign the Arbitration Agreement and by maintaining and/or enforcing the Arbitration Agreement (1) because it interferes with employees' Section 7 rights to engage in collective legal activity such as participating in collective and class litigation; (2) because it interferes with employees' access to the Board and its processes; and (3) because the confidentiality provision interferes with employees' Section 7 rights to discuss their wages, hours, and other terms and conditions of employment with others by restricting employees from publicly disclosing the terms of arbitration awards.[1]

The parties submitted this case by joint stipulation of facts which was accepted on October 6, 2015. On the entire record, and after considering the parties' statements of position and the briefs filed by counsel for the General Counsel and counsel for the Respondent, the following findings of fact and conclusions of law are made.

JURISDICTION

Respondent is a Delaware corporation with its headquarters in San Diego, California. It operates fast-food restaurants on a nationwide basis, including a fast-food restaurant in San Jose, California. In conducting its operations during the 12-month period ending June 30, 2015, Respondent derived gross revenue in excess of $500,000. During that same period, Respondent purchased and received goods valued in excess of $5000 directly from points outside the State of California. The parties thus stipulate and I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly, this dispute affects interstate commerce and the Board has jurisdiction of this case pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICE ALLEGATIONS

Respondent has maintained the Arbitration Agreement on a nationwide basis since at least July 26, 2014. Respondent

[1] The unfair labor practice charge was filed by Dana Ocampo, an individual, on January 26, 2015. On July 30, 2015, the complaint and notice of hearing issued. Respondent duly filed an answer to the complaint, admitting and denying certain allegations.

promulgates to its employees at the time of their hire and requires them, through a web-based application, to sign a "Dispute Resolution and Arbitration Agreement" (the Arbitration Agreement). Specific portions of the Arbitration Agreement are alleged to interfere with, restrain, or coerce employees. The parties stipulated that the Arbitration Agreement specifically informs employees that they are bound to the Arbitration Agreement as a condition of their employment with Respondent.

Alleged Interference with Right to Engage in Collective Legal Action

The Arbitration Agreement is a 5-page, single spaced document. The portions quoted below are from pages 1–2 and 5. The second sentence of the Arbitration Agreement (page 1) states, "Employee understands and agrees that any such differences [that may arise between Employee and Respondent] will be resolved by the terms of this [Arbitration Agreement]." Various other parts of the Arbitration Agreement also reference or inform an employee's ability to engage in collective court, administrative, or arbitral action. For instance:

> Mutual Promise to Resolve Claims by Binding Arbitration (page 1)
>
> In signing the Acknowledgment and Receipt, Employee agrees that all claims or disputes covered by this Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive remedy for resolving any such claim or disputes. The Company also agrees that all claims or disputes covered by this Agreement that Company may have against Employee will be submitted to binding arbitration as the sole and exclusive remedy for any such claim or dispute.
>
> Claims Covered by the Agreement (pages 1–2)
>
> This Agreement applies to disputes and claims for relief Employee may presently or in the future have against the Company or against its officers, directors, employees, or agents in any way related to Employee's employment or termination of employment including, but not limited to, claims for wrongful discharge under statutory and common law; claims for discrimination based on [specifically enumerated bases not including NLRA] or any other claim of discrimination. This Agreement also applies to claims brought under state or federal laws including, but not limited to [specifically enumerated bases not including NLRA] or any other present or future laws; any claims for retaliatory discharge . . . and any other statutory and common law claims under any law of the United States or State or local agency are also covered by this Agreement. . . .
>
> Nothing in this Agreement precludes Employee from filing a charge or from participating in an administrative investigation of a charge before an appropriate government agency, including the Equal Employment Opportunity Commission or similar state Agency.
>
> Claims Not Covered by this Agreement (page 2)
>
> The following claims or disputes are not covered by this Agreement: claims for unemployment insurance benefits; claims for workman's compensation benefits; claims seeking only monetary recovery where the total amount of the claim does not exceed $15,000; claims that in the absence of This Agreement have no basis in law or could not be filed in court; or claims both Employee and Company agree are not covered by this Agreement. Neither Employee nor Company shall be entitled to join or consolidate in arbitration claims not covered by this Agreement or arbitrate a representative action or a claim as a representative or member of a class.
>
> Exclusive, Final and Binding Remedy for Eligible Disputes (page 2)
>
> If employee or Company is seeking to resolve claims covered by this Agreement, they must use binding arbitration. As to any such dispute, arbitration is designed as a substitute for court action and except as provided by this Agreement is the exclusive, final, and binding method to resolve the dispute, whether based on federal, state, or local law. Neither the Company nor the Employee can initiate or prosecute a lawsuit which raises a dispute covered by this Agreement. Employee must first pursue an administrative claim or charge under federal or state discrimination laws prior to seeking arbitration of that claim or charge as required by law. The Company and Employee agree to give up their respective constitutional rights to have these claims decided in a court of law before a jury, and instead are accepting the use of final and binding arbitration.
>
> No Loss of Rights (page 5)
>
> This procedure, and the Agreement implementing it, does not create or destroy any individual legal rights; it only changes the forum in which those rights will be resolved. In other words, the Employee will be able to arbitrate the same claims he/she could bring in court, and the Arbitrator will apply exactly the same laws and principles as would a judge or jury. The arbitrator can award to the winning party the same recovery the party would be entitled to in a court of law subject to the same limitations used by courts of law.

The language in the Arbitration Agreement, an acknowledged condition of employment, is quite broad. The terms of the agreement specifically require single[2] employee arbitration as the only method for resolving all employment-related claims. It is "the sole and exclusive remedy for any such claim or dispute."[3] No employee can initiate or prosecute a lawsuit which raises a dispute covered by the Arbitration Agreement.[4] Thus, the Arbitration Agreement applies to "disputes and claims for relief Employee may presently or in the future have against [Respondent] . . . in any way related to Employee's employment or termination of employment."[5]

[2] Neither Employee nor Company shall be entitled to join or consolidate in arbitration claims not covered by this Agreement or arbitrate a representative action or a claim as a representative or member of a class. (Claims Not Covered by this Agreement.)

[3] Mutual Promise to Resolve Claims by Binding Arbitration.

[4] Exclusive, Final and Binding Remedy for Eligible Disputes.

[5] Claims Covered by this Agreement.

Nothing in the "Claims Not Covered" portion of the Arbitration Agreement lessens the impact of the broad language. The only exemptions in that language are for unemployment compensation, workers' compensation, claims for less than $15,000, and baseless claims. Moreover, the specific language allowing "filing a charge" or "participating in an administrative investigation of a charge before an appropriate government agency"[6] does not include allowing employees to access the courts in concert regarding employment-related matters.

In *Murphy Oil USA, Inc.,* 361 NLRB No. 72 (2014), enf. denied, ___ F.3d ___ (5th Cir. No. 15–60800, Oct. 26, 2015),[7] the Board emphasized the core objective of the Act to protect workers' ability to act in concert in support of one another, and held that "arbitration agreements that are imposed as a condition of employment, and that compel NLRA-covered employees to pursue workplace claims against their employer individually" require forfeiture of the substantive right to act collectively. *Murphy Oil,* supra, slip op. at 2. Thus, the Board found that such an arbitration agreement nullified "the foundational principle that has consistently informed national labor policy as developed by the Board and the courts." Id. This includes seeking to improve working conditions through resort to administrative and judicial forums. . . ."[8]

Respondent asserts that *Murphy Oil* was improperly decided arguing that by holding that an employer may not require its employees to agree to arbitration as a condition of employment "the Board overreached its statutory authority and ignored settled Supreme Court precedent." Specifically, Respondent asserts that *Murphy Oil* conflicts with the fundamental principles of the Federal Arbitration Act (FAA). Relying on *CompuCredit Corp. v. Greenwood,* ___ U.S. ___, 132 S.Ct. 665 (2012) (because the Credit Repair Organization Act is silent on whether claims under the Act can proceed in an arbitrable forum, the FAA requires the parties' arbitration agreement to be enforced according to its terms), Respondent argues that because the NLRA is silent on whether claims under it can proceed to arbitration, the FAA requires that arbitration agreements be enforced according to their terms. Respondent asserts that the Board failed to give appropriate deference to the FAA in *Murphy Oil*, thus resulting in rejection of its holding by almost every federal and state court presented with the issue. These arguments were addressed and rejected in *Murphy Oil*.[9] *Murphy Oil* is binding precedent for purposes of this proceeding.

Further, Respondent argues that its Arbitration Agreement is specifically permitted by the FAA as recently interpreted in *American Express Co. v. Italian Colors Restaurant*, ___ U.S. ___, 133 S.Ct. 2304 (2013), and *AT&T Mobility LLC v. Concepcion,* ___ U.S. ___, 131 S.Ct. 1740 (2011). In *Murphy Oil,* supra, 361 NLRB No. 62, slip op. at 10–15, the Board rejected this argument. The Board found instead that its view—that requiring employees to waive their right to collectively pursue employment-related claims in all forums, arbitral and judicial violated Section 8(a)(1)—did not conflict with the letter or interfere with the policies underlying the FAA.

An administrative law judge is required to apply established Board precedent which the Supreme Court has not reversed. "Only by such recognition of the legal authority of Board precedent, will a uniform and orderly administration of a national act, such as the National Labor Relations Act, be achieved." *Pathmark Stores, Inc.,* 342 NLRB 378 at fn. 1 (2004) (quoting *Iowa Beef Packers, Inc.,* 144 NLRB 615, 616 (1963), enfd. in part 331 F.2d 176 (8th Cir. 1964) (quoting *Insurance Agents' International Union, AFL–CIO,* 119 NLRB 768, 773 (1957)). Respondent asserts that because *Murphy Oil* has essentially been overruled or reversed by Supreme Court precedent, I may not follow it. I disagree.

Murphy Oil is consistent with the Court's holdings which did not involve the core substantive Section 7 right of employees to act together to file a class action lawsuit. The Board's interpretation of the Section 7 right of employees to act together to file lawsuits against for employment related claims as a core substantive right is entitled to judicial deference. Moreover, *American Express* and *Concepcion* did not involve an employer who required employees to waive their substantive Section 7 rights. Because *Murphy Oil* was not reversed by Supreme Court precedent, Respondent's argument is rejected.

A reasonable reading of the plain language of the Arbitration Agreement leaves no doubt that a term and condition of employment is forfeiture of the substantive right to act in concert in filing collective or class litigation regarding employment wages, hours, or other working conditions against Respondent in any forum, arbitral or judicial.[10] Thus, employees are compelled to pursue workplace claims against their employer through individual arbitration, forfeiting their substantive right to act collectively in that forum or any other forum. Based upon the record as a whole, I find that by requiring employees to act individually by precluding them from participating in collective

[6] Claims Covered by this Agreement.

[7] As Respondent points out, the courts which have reviewed cases relying on *Murphy Oil* and on an earlier case, *D. R. Horton, Inc.,* 357 NLRB 2277 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), petition for rehearing en banc denied (5th Cir. No. 12–60031, April 16, 2014), have denied enforcement of the Board's holdings. This argument was addressed and rejected in *Murphy Oil,* supra, slip op.6–11. Moreover, the Board is not required to acquiesce in adverse decisions of the Federal courts in subsequent proceedings not involving the same parties. *Murphy Oil,* supra, 361 NLRB No. 72, slip op. p. 2, fn. 17, citing, *Enloe Medical Center v. NLRB*, 433 F.3d 834, 838 (D.C. Cir. 2005); *Nielsen Lithographing Co. v. NLRB*, 854 F.2d 1063, 1066–1067 (7th Cir. 1988).

[8] *Eastex, Inc. v. NLRB*, 437 U.S. 556, 566 (1978), cited in *Murphy Oil,* supra, slip op. at 1. See also, *Amex Card Services Co.,* 363 NLRB No. 40, slip op. at p. 2 (2015) (arbitration policy facially unlawful because it requires employees, as a condition of employment, to submit their employment-related legal claims to individual arbitration).

[9] *Murphy Oil,* supra, slip op. 1–2 holding "Arbitration [under the FAA] is a matter of consent, not coercion," and a valid arbitration agreement may not require a party to prospectively waive its "right to pursue statutory remedies; slip op. at 9 holding that the FAA does not apply, "because Section 7 of the NLRA amounts to a "contrary congressional command" overriding the FAA." See also, *Convergys Corp.,* 363 NLRB No. 51, fn. 3 (2015).

[10] In my view, the language is not ambiguous at all. Moreover, to the extent there are any ambiguities, they must be resolved against Respondent, the drafter of the document. See, e.g., *Supply Technologies, LLC,* 359 NLRB 38, slip op. at 3 (2012), citing *Lafayette Park Hotel,* 326 NLRB 824, 828 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999).

and class arbitration or litigation, the Arbitration Agreement interferes with the core substantive workers' Section 7 right: the ability to act in concert in support of one another. Thus, the Arbitration Agreement violates Section 8(a)(1) of the Act.

Alleged Interference with Access to the Board

The Arbitration Agreement does not specifically prohibit access to the NLRB. Rather, the General Counsel claims that the language of the Arbitration Agreement is so broad and confusing that employees would reasonably conclude that they are precluded from filing unfair labor practice charges with the Board.

Specifically, as seen in the quoted provisions above, the Arbitration Agreement provides that "all claims or disputes covered by this Agreement must be submitted to binding arbitration" which is "the sole and exclusive remedy for resolving any such claim or dispute."[11] Further, the Arbitration Agreement provides, "Nothing in this Agreement precludes Employee from filing a charge or from participating in an administrative investigation of a charge before an appropriate government agency, including the Equal Employment Opportunity Commission or similar state Agency."[12] Specific exclusions from binding arbitration include only unemployment insurance benefits, workmen's compensation benefits, monetary claims for less than $15,000, and claims without a basis in law.[13]

> As the Board stated in *Hooters of Ontario Mills,* 363 NLRB No. 2 (2015):
>
> It is well settled that a work rule violates Section 8(a)(1) if employees would reasonably believe that the rule interferes with their ability to file Board charges, even if the policy does not expressly prohibit access to the Board. See *Murphy Oil USA, Inc*., 361 NLRB No. 72, slip op. at 19 fn. 98 (2014); *D. R. Horton, Inc*., 357 NLRB No. 184, slip op. at 2 fn. 2 (2012), enf. denied on other grounds 737 F.3d 344 (5th Cir. 2013), petition for rehearing en banc denied (2014); *U-Haul Co. of California*, 347 NLRB 375, 377–378 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007). Furthermore, it is settled that production of extrinsic evidence, such as testimony showing that employees interpreted the rule to preclude access to the Board, is not a precondition to finding that a rule is unlawful by its terms. See, e.g., *Murphy Oil*, supra, slip op. at 13 fn. 79; *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 1–2 (2014) (citing *Lutheran Heritage Village Livonia*, 343 NLRB 646, 646–647 (2004); *Claremont Resort & Spa*, 344 NLRB 832, 832 (2005)).

The Board has held repeatedly that broad language in defining the issues subject solely to arbitral resolution is reasonably interpreted to encompass and prohibit the filing of unfair labor practice charges. See, e.g., *Supply Technologies, LLC,* 359 NLRB No. 38, slip op. 1–4 (2012) (agreement mandating that employees "bring any claim of any kind" including claims relating to the application for employment, actual employment or termination of employment must be remedied through alternative dispute resolution reasonably understood to prohibit filing of unfair labor practice charges); *2 Sisters Food Group,* 357 NLRB 1816, 1816–1817 (2011) (policy requiring that all employment disputes and claims be submitted to arbitration reasonably understood to include filing of unfair labor practice charges); *U-Haul Co. of California,* 347 NLRB 375, 377–378 (2006), enfd 255 F.Appx. 527 (D.C. Cir. 2007) (required arbitration of all disputes relating to or arising out of employment or termination including any legal or equitable claims or causes of action recognized by local, state, or federal law or regulation reasonably read to prohibit access to NLRB).

Moreover, as the General Counsel points out, when determining a reasonable interpretation, the Board does not presume that employees have specialized legal knowledge. See, e.g., *2 Sisters Food Group,* supra, 357 NLRB 1816, 1817, quoting *U-Haul,* 347 NLRB at 377: "[T]he limiting language in the Respondent's arbitration policy does not by its terms specifically exclude NLRB proceedings, and 'most nonlawyer employees' would not be sufficiently familiar with the limitations the Act imposes on mandatory arbitration for the language to be effective."

In *Hooters of Ontario Mills,* supra, 363 NLRB No. 2, the arbitration agreement required that all claims between the employee and employer by decided exclusively by arbitration. "Claims" were defined broadly and included any claim under federal law or statute including claims of discrimination, retaliation, discharge, or for wages. The Board held that although the language did not explicitly prohibit the filing of charges with the Board, the broad language would be reasonably read by employees to prohibit the filing of charges with the NLRB. *Hooters of Ontario Mills,* supra, slip op. at 2. Although the agreement excluded coverage of any dispute that cannot be arbitrated as a matter of law, the Board held this did not save the agreement because unfair labor practice charges filed with the Board may be resolved by arbitration. Id.

Similarly, in *Countrywide Financial Corp.,* 362 NLRB No. 165 (2015), the employer's arbitration agreement was the exclusive remedy for all claims or controversies including those related to employment application, hiring, employment relationship, and termination. Claims for wages, contract breach, discrimination, and violation of any federal statute, regulation, or public policy were included by way of example. Based on the breadth of the language encompassing claims under Federal statutes and regulations, the Board found that this language would reasonably be read to include alleged violations of the Act. Slip op. at 2. Further, the Board rejected the employer's argument based upon a savings clause excluding arbitration if prohibited by law. The Board found that unless the language specifically excluded NLRB proceedings, most nonlawyer employees would not be sufficiently familiar with the limitations the Act imposes on mandatory arbitration. Slip op. at 3. Thus, the Board concluded that the agreement would reasonably be read to prohibit access to the Board. Id.

The facts before me are indistinguishable from those in *Hooters* and *Countrywide.* Here, although the Arbitration Agreement does not specifically preclude the filing of charges with the NLRB, arbitration is nevertheless the sole and exclu-

[11] Mutual Promise to Resolve Claims by Binding Arbitration (quoted in full supra).

[12] Claims Covered by This Agreement (quoted supra).

[13] Claims Not Covered by this Agreement, quoted in full above.

sive remedy for resolving any dispute now or in the future regarding employment or termination of employment. The specific exceptions to arbitration do not include filing charges with the NLRB. The savings clause applies only to equal employment opportunity claims. Accordingly, I find that the Arbitration Agreement is reasonably read to preclude filing charges with the NLRB. By maintaining the Arbitration Agreement, Respondent has interfered with employees' Section 7 right to file charges with the Board and avail themselves of the Board's processes in violation of Section 8(a)(1) of the Act.

Alleged Unlawful Confidentiality Rule

The Arbitration Agreement contains the following confidentiality language:

> Confidentiality
>
> The Arbitrator's decision is confidential. Neither Employee nor the Company may publicly disclose the terms of the award unless:
>
> - Agreed to in writing by the other party, or
> - Subpoenaed by a court to testify, or
> - Required by law

The General Counsel claims this clause interferes with employees' Section 7 right to discuss their wages, hours, and other terms and conditions of employment by restricting employees from publicly disclosing the terms of the arbitration awards. Respondent points out that the confidentiality clause does not explicitly or implicitly prohibit employees from disclosing the terms of an arbitration award. Relying on OM 12–59, NLRB, Operations Memorandum 07–27, Respondent also notes that confidentiality clauses covering nondisclosure of the financial terms of a non-Board settlement are generally allowed.

If a work rule would reasonably tend to chill employees in the exercise of their Section 7 rights, it will violate Section 8(a)(1) of the Act. *Hyundai America Shipping Agency,* 357 NLRB 860, 861 (2011); *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). A violation may occur merely by maintenance of such a rule—even in the absence of enforcement. *Lafayette Park Hotel,* supra; see also, *Cintas Corp*., 344 NLRB 943 (2005), enfd.482 F.3d 463 (D.C. Cir. 2007).

A rule which explicitly restricts Section 7 rights is unlawful. *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). In the absence of explicit restriction, a violation will nevertheless be found if (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict Section 7 rights. Id. at 646–647. There is no allegation that any of these rules were promulgated in response to union activity or to restrict Section 7 rights. Thus, the sole inquiry here is whether employees would reasonably construe the language to prohibit Section 7 activity. In determining whether a challenged rule is unlawful, the rule must be given a reasonable reading and particular phrases may not be read in isolation. *Lafayette Park,* supra, 326 NLRB at 825, 827. In other words, there is no presumption of improper interference with employee rights. Id.

Respondent's confidentiality clause explicitly requires that employees not divulge the terms of any arbitration award. The language, then, reasonably implies that employees cannot discuss with each other the facts of the case, the respective merits of the parties positions, their motivation in seeking relief, or the award rendered regarding any arbitration proceeding. The right of employees to discuss such matters with each other lies at the core of Section 7, which protects concerted activity for mutual aid and protection. See, e.g., *Professional Janitorial Service of Houston,* 363 NLRB No. 35, fn. 3 (2015); *Rocky Mountain Eye Center, P.C.,* 363 NLRB No. 34, fn. 1 (2015); *Hyundai America Shipping,* 357 NLRB 860, 860 (2011), enf. in relevant part, ___ F.3d ___ (D.C. Cir. 2015); *Double Eagle Hotel & Casino,* 341 NLRB 112, 115 (2004), enfd 414 F.3d 1249 (10th Cir. 2005). Thus, I find that maintaining the confidentiality provision of the Arbitration Agreement, Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. By requiring employees to sign the Arbitration Agreement as a condition of their employment and by maintaining and enforcing the Arbitration Agreement, Respondent has interfered with employees' Section 7 rights to engage in collective legal activity such as participating in collective and class action in any forum. Thus, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
2. By requiring employees to sign the Arbitration Agreement as a condition of their employment and by maintaining and enforcing the Arbitration Agreement, Respondent has interfered with employees' Section 7 rights to file unfair labor practice charges with the Board and to avail themselves of the Board's processes in violation of Section 8(a)(1) of the Act.
3. By requiring employees to sign the Arbitration Agreement as a condition of their employment and by maintaining and enforcing the Arbitration Agreement, Respondent has interfered with employees' Section 7 rights to discuss their wages, hours, and other terms and conditions of employment with others by restricting employees from publicly disclosing the terms of arbitration awards.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent's Arbitration Agreement requires that employees waive their right to pursue class or collective action claims in any forum, whether arbitral or judicial, and may be reasonably interpreted as prohibiting employees from filing unfair labor practice charges with the National Labor Relations Board, and may further be reasonably interpreted as prohibiting employees from discussing their wages, hours, and other terms and conditions of employment with others by restricting employees from publicly disclosing the terms of arbitration awards, it is recommended that the Respondent be ordered to rescind or revise the Arbitration Agreement and to provide employees with specific notification that the Arbitration Agreement has been rescinded or revised.

Further, Respondent must post a notice in all locations where

the Arbitration Agreement was utilized. See, e.g., *D. R. Horton, Inc.,* supra, 357 NLRB 2277, 2289; *U-Haul Co. of California,* supra, 347 NLRB at 375, fn.2; *Guardsmark, LLC,* 344 NLRB 809, 812 (2005), enfd. in relevant part, 475 F.3d 369 (D.C. Cir 2007).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Jack In the Box, Inc., nationwide including a facility in San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and/or enforcing its Arbitration Agreement as a condition of employment thus requiring employees to waive their right to pursue class or collective claims in all forums, whether arbitral or judicial.

(b) Maintaining and/or enforcing its Arbitration Agreement as a condition of employment containing language that would reasonably be understood to prohibit employees' rights to file unfair labor practice charges with the National Labor Relations Board or to access the Board's processes.

(c) Maintaining and/or enforcing its Arbitration Agreement as a condition of employment containing language that would reasonably be understood to prohibit employees' rights to discuss their wages, hours, and other terms and conditions of employment with others by restricting employees from publicly disclosing the terms of arbitration awards.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the mandatory and binding Arbitration Agreement or revise it to make clear to employees that the Arbitration Agreement does not constitute (1) a waiver of their right to maintain employment-related joint, class, or collective actions in all forums, whether arbitral or judicial, (2) a prohibition of access to the National Labor Relations Board or its processes, and (3) does not preclude discussion of wages, hours, and other terms and conditions of employment.

(b) Notify all current and former employees who were required to sign the Arbitration Agreement that it has been rescinded or revised and, if revised, provide them with a copy of the revised agreement.

(c) Within 14 days after service by the Region, post at all of its locations nationwide where notices to employees are customarily posted, copies of the attached notice market "Appendix.[15] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 1, 2015

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory Arbitration Agreement that requires you, as a condition of employment, to waive the right to maintain joint, class, or collective actions in all forums whether arbitral or judicial.

WE WILL NOT maintain a mandatory Arbitration Agreement that you would reasonably understand prohibits you or restricts your right to file charges with the National Labor Relations Board or to use the processes of the National Labor Relations Board.

WE WILL NOT maintain a mandatory Arbitration Agreement which states that you agree that you may not publicly disclose the terms of any arbitration award because this language would

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

reasonably be understood to prohibit you from discussing such things as the facts of the case, circumstances surrounding the case, tactics of the parties, or the outcome of the arbitration proceeding in violation of your right to discuss your wages, hours, and other terms and conditions of employment with others.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL rescind or revise our Arbitration Agreement

- to eliminate the waiver of your right to maintain joint, class, or collective actions in all forums whether arbitral or judicial;
- to eliminate language which would reasonably be understood to restrict your rights to file charges with or to use the processes of the National Labor Relations Board; and
- to eliminate language which requires confidentiality of the arbitration agreement and is reasonably understood to prohibit discussion wages, hours, and other terms and conditions of employment.

WE WILL furnish all current employees with written notice that the unlawful provisions have been rescinded or revised and furnish them with copies of any such revisions.

JACK IN THE BOX, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/32-CA-145068 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.